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AMERICAN HOME MORTGAGE SERVICING, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DR. BRADLEY-BROWN, individually
and on behalf of all others similarly
situated,

Plaintiff,

vs.

AMERICAN HOME MORTGAGE
SERVICING, INC.

Defendant.

CASE NO. SACV 11-1132 DOC (RNBx)

Hon. David O. Carter

**DEFENDANT AMERICAN HOME
MORTGAGE SERVICING, INC'S
NOTICE OF MOTION AND
MOTION TO TRANSFER THE
ACTION PURSUANT TO 28 U.S.C.
§1404(a); MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

DATE: Nov. 7, 2011
TIME: 8:30 a.m.
PLACE: Courtroom 9D

PLEASE TAKE NOTICE that on November 7, 2011 at 8:30 a.m., or as soon thereafter as the matter may be heard in the above-entitled Court, Defendant American Home Mortgage Servicing, Inc. ("AHMSI") will bring for hearing before the Honorable David O. Carter, United States District Court Judge, in Courtroom 9D of

1 the United States District Court located at 411 W. Fourth Street, Santa Ana,
2 California, a Motion to Transfer the Action pursuant to 28 U.S.C. §1404(a).

3 This Motion is made following the conference of counsel pursuant to L.R. 7-3
4 which took place on September 29, 2011, and is based on this Notice of Motion and
5 Motion, the attached Memorandum of Points and Authorities, the Declaration of Steve
6 Massey filed concurrently herewith, the pleadings, papers and records on file in this
7 action, and such oral argument as may be presented at the time of the hearing.
8

9 Dated: October 4, 2011

Respectfully submitted,

10 LOCKE LORD LLP

11 By: /s/ Conrad V. Sison

12 Conrad V. Sison

13 Kelly S. Biggins

14 Attorneys for Defendant

15 **AMERICAN HOME MORTGAGE**
16 **SERVICING, INC.**
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff, a non-California resident, filed this lawsuit in a court entirely across the country from her home State of Pennsylvania and in a forum which bears absolutely no relation to the mortgage on her home in Pennsylvania or to the causes of action asserted in the Complaint. The lawsuit centers on AHMSI's alleged improper practices of providing "lender-placed" insurance policies in connection with residential mortgage loans serviced by AHMSI. (Compl. at ¶ 1.) AHMSI is headquartered in the Northern District of Texas. The operative events underlying this lawsuit occurred in Texas. Plaintiff's choice of forum in this Court is inconvenient for AHMSI because the majority of key witnesses reside in the Northern District of Texas, the vast majority of key documents and evidence is kept there, and, irrespective of where AHMSI's service centers are located, all key decisions by AHMSI executives, including those relating to placement of insurance, occur in the Northern District of Texas.

Furthermore, a transfer of this action to the Northern District of Texas will impose *no* burden on a Pennsylvania Plaintiff who had no issue with filing and litigating this action in a state far from where she resides. As discussed more fully herein, the Northern District of Texas has the strongest relationship to this litigation and is the most convenient forum for the parties and witnesses. Considering the factors of convenience to the parties and witnesses and in the interest of justice, and to prevent a textbook example of forum shopping, transfer of this action to the Northern District of Texas, Dallas Division pursuant to 28 U.S.C. § 1404(a) is the only appropriate course.

II. STATEMENT OF RELEVANT FACTS

Plaintiff filed the instant putative class action lawsuit on July 28, 2011 on behalf of herself and class of homeowners who have or had residential mortgage loans owned and/or serviced by AHMSI and have been required to pay for lender-placed

1 insurance in connection with those loans. (Dkt. No. 1; Compl. at ¶ 1.) As indicated
 2 above, the crux of the lawsuit challenges AHMSI's processes and practices related to
 3 its purchase of lender-placed insurance policies. (Compl. at ¶¶ 2-5.) In connection
 4 with these allegations, Plaintiff asserts claims for (1) violations of Real Estate
 5 Settlement and Procedures Act ("RESPA") (12 U.S.C. § 2607), (2) breaches of the
 6 mortgage contracts, (3) breaches of implied covenants of good faith and fair dealing,
 7 (4) violations of California's Unfair Competition Law, codified at the Business &
 8 Professions Code §§ 17200 *et seq.*, (5) violations of Pennsylvania's Unfair Trade
 9 Practices and Consumer Protection Law, codified at 73 Pa. Stat. §§ 201-2(4)(xxi) and
 10 201-3, (6) unjust enrichment, and (7) declaratory and injunctive relief preventing the
 11 above-described insurance practices. (Compl. at pp. 17-29.)

12 Although the lawsuit was filed in California, Plaintiff is a resident of
 13 Philadelphia, Pennsylvania, and her home which is subject to a mortgage loan
 14 serviced by AHMSI is located at 5409 Woodcrest Ave., Philadelphia, Pennsylvania.
 15 (Compl. at ¶¶ 11-13.)

16 AHMSI, by contrast, is a Delaware corporation and is headquartered in
 17 Coppell, Texas.¹ (Compl. at ¶¶ 15, 18; Declaration of Steve Massey at ¶ 3, attached
 18 hereto as Exhibit A ("Massey Decl.")). Additionally, while AHMSI maintains two
 19 service centers/operations outside of Texas—with the California location slated for
 20 closure in the next sixty (60) days—its principal place of business is located at its
 21 headquarters in Coppell, Texas. (Compl. at ¶ 18; Massey Decl. at ¶¶ 3-4.) AHMSI's
 22 executive officers maintain offices in Coppell. (Massey Decl. at ¶ 5.) All decisions
 23 regarding AHMSI's policies, including policies regarding lender-placed insurance, are
 24 made from AHMSI's headquarters in Texas. (*Id.* at ¶ 6.)

25 Following the filing and service of the instant action, on August 19, 2011, the
 26 parties filed, and the Court granted, two stipulations extending the time for AHMSI to
 27

28

¹ AHMSI's headquarters in Coppell are located within Dallas County, Texas, less than 25 miles from downtown Dallas.

1 answer or otherwise respond to the Complaint. (*See* Dkt. Nos. 4, 6, 10, 11.) AHMSI
 2 then timely and concurrently filed the instant Motion as well as a Motion to Dismiss.
 3 No discovery or depositions have taken place thus far.

4 **III. THE TRANSFER INQUIRY UNDER § 1404(a) STRONGLY FAVORS**
 5 **THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION.**

6 A motion to transfer pursuant to 28 U.S.C. §1404(a) lies within the discretion of
 7 the district court. 28 U.S.C. §1404(a) (“For the convenience of parties and witnesses,
 8 in the interest of justice, a district court may transfer any civil action to any other
 9 district or division where it might have been brought.”). The objectives of §1404(a)
 10 are “to prevent the waste of time, energy and money and to protect litigants, witnesses
 11 and the public against unnecessary inconvenience and expense.” *Van Dusen v.*
 12 *Barrack*, 376 U.S. 612, 616 (1964) (internal quotation marks omitted). Under
 13 §1404(a) the district court has the discretion to “adjudicate motions for transfer
 14 according to an ‘individualized case-by-case consideration of convenience and
 15 fairness.’” *Jones v. GNC Franchising, Inc.*, 211 F.3d 496, 498-499 (9th Cir. 2000)
 16 (citing *Stewart Org. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988)).

17 The Court’s transfer analysis begins by looking at whether the action could
 18 have been brought in the alternative forum. *Hoffman v. Blaski*, 363 U.S. 335, 343-344
 19 (1960). The Court’s transfer analysis also includes consideration of both private
 20 factors, which go to the convenience of the parties and witnesses, and public factors,
 21 which go to the interests of justice. *Decker Coal Co. v. Commonwealth Edison Co.*,
 22 805 F.2d 834, 843 (9th Cir. 1986); *E. & J. Gallo Winery v. F. & P. S.p.A.*, 899 F.
 23 Supp. 465, 466 (E.D. Cal. 1994) (“Three factors are in the inherently broad discretion
 24 of the Court, allowing the Court to consider the particular facts of each case:
 25 convenience of the *parties*, convenience of the *witnesses*, and *interest of justice*.”)
 26 (emphasis in original). Such factors may include: (1) the location where the relevant
 27 agreements were negotiated and executed; (2) the state that is most familiar with the
 28 governing law; (3) the plaintiff’s choice of forum; (4) the parties’ respective contacts

1 with the forum; (5) the contacts relating to the plaintiff's cause of action in the chosen
 2 forum; (6) the differences in the costs of litigation in the two forums; (7) the
 3 availability of compulsory process to compel attendance of unwilling non-party
 4 witnesses; (8) the ease of access to sources of proof; (9) the presence of a forum
 5 selection clause; and, (10) the relevant public policy of the forum state, if any. *Jones*,
 6 211 F.3d at 498-499. Taken as a whole, these factors strongly favor transfer to the
 7 Northern District of Texas, Dallas Division.

8 **A. The Action Could Have Been Brought In The Northern District of**
 9 **Texas.**

10 In the instant case, it cannot be disputed that venue in the Northern District of
 11 Texas is proper. AHMSI is a corporation organized under the State of Delaware and
 12 is headquartered in Coppell, Texas. (Compl. at ¶¶ 15, 18; Massey Decl. at ¶ 3.)
 13 Further, and contrary to Plaintiff's allegations, AHMSI's Coppell, Texas headquarters
 14 is also its principal place of business. (Massey Decl. at ¶ 3.) Irrespective of where
 15 AHMSI's service centers are located, the substantial part of the events or omissions
 16 giving rise to Plaintiff's claims occurred at AHMSI's headquarters in Texas.
 17 Specifically, all of AHMSI's executive officers are located in Texas. (*Id.* at ¶ 5.) All
 18 policy decisions regarding lender-placed insurance are made from AHMSI's
 19 headquarters in Texas. (*Id.* at ¶ 6.) Also, AHMSI maintains all policy manuals,
 20 accounting records, and other servicing-related documents in Texas. (*Id.* at ¶ 7.) In
 21 short, AHMSI's headquarters in Coppell, Texas is its "nerve center." Accordingly,
 22 venue in the Northern District of Texas is proper. 28 U.S.C. § 1391(b)(2) and (c).

23 Because the Northern District of Texas would have complete personal
 24 jurisdiction over AHMSI and subject matter jurisdiction over the claims, and because
 25 it is a proper venue, Plaintiff could have brought this action in the Northern District of
 26 Texas, Dallas Division. Accordingly, AHMSI now turns to the second prong of the
 27 §1404(a) transfer analysis and discusses the compelling factors which are sufficient to
 28 grant the instant Motion to Transfer.

**B. The Private Factors (Convenience Of The Parties And Witnesses)
Favor Transfer Of This Action.**

**1. AHMSI Executives, The Most Important Witnesses In This Case,
Are All Located In The Northern District of Texas.**

Courts generally consider the convenience of the witnesses to be the most important factor in deciding whether to transfer venue. *L.A. Mem'l Coliseum Comm'n v. Nat'l Football League*, 89 F.R.D. 497, 501 (C.D. Cal. 1981). As part of this analysis, the party seeking transfer must “specify the key witnesses to be called and make a general statement of what their testimony will cover.” *Charter Oak Fire Ins. Co. v. Broan-Nutone, LLC*, 294 F. Supp. 2d 218, 220 (D. Conn. 2003); *see also Tucker v. Am. Int'l Group, Inc.*, 728 F. Supp. 2d 114, 127 n.30 (D. Conn. 2010) (noting that this factor considers convenience of party and non-party witnesses). It is not the number of witnesses that is determinative, but “the materiality of their anticipated testimony.”² *Charter Oak Fire Ins. Co.*, 294 F. Supp. 2d at 220-221 (quoting *Schwartz v. Marriott Hotel Servs.*, 186 F. Supp. 2d 245, 249 (E.D.N.Y. 2002)); *Brandon Apparel Group, Inc. v. Quiman Mfg. Co., Inc.*, 42 F. Supp. 2d 821, 834 (N.D. Ill. 1999).

Here, Plaintiff cannot credibly dispute that the overwhelming majority of key witnesses are located in Texas’s Northern District. As set forth above, AHMSI’s executive officers who oversee and manage all servicing operations are located in Texas. (Massey Decl. at ¶ 5.) For example, Steve Massey, the Executive Vice President, Investor and Core Servicing at AHMSI, lives in Texas and works at AHMSI’s headquarters in Coppell, Texas. (*Id.* at ¶¶ 1, 5.) As the Executive Vice President, Investor and Core Servicing at AHMSI, Mr. Massey is responsible for AHMSI’s policies and procedures governing lender-placed insurance. (*Id.* at ¶ 5.)

² Courts also consider which forum, if any, can better compel non-party witnesses. *See BRM Indus., Inc. v. Mazak Corp.*, 42 F. Supp. 2d 176, 181 (D. Conn. 1999). Although Plaintiff has not yet identified any potentially unwilling non-party witnesses, this factor will likely weigh in favor of Texas since most witnesses likely to be called by Plaintiff will reside in Texas.

Accordingly, Mr. Massey can provide testimony about decisions concerning AHMSI's policies regarding servicing of mortgage loans and lender-placed insurance, all of which goes to the heart of Plaintiff's claims. (*Id.*) Additionally, all of AHMSI's custodians of records for policy manuals and servicing-related documents are located at AHMSI's Coppell, Texas headquarters. (*Id.* at ¶ 7.) Thus, since the most important witnesses in this case reside and work in Texas, this factor strongly weighs in favor of transfer to the Northern District of Texas.

2. The Relevant Business, Accounting And Servicing-Related Documents Are Located In The Northern District of Texas.

The location and ease of access to relevant documents and other sources of proof also weighs in favor of transfer. *Saleh v. Titan Corp.*, 361 F.Supp.2d 1152, 1160, 1166 (S.D. Cal. 2005). As set forth above, the key documents in this case, including AHMSI's policy manuals, and loan and accounting files, are located in Texas. (Massey Decl. at ¶ 7.) Accordingly, the fact that the majority of evidence is in Texas and the majority of discovery would take place there weighs heavily in favor of transfer to the Northern District.

3. The Convenience Of The Parties Supports Transfer Because Texas Is Far More Convenient For AHMSI and Equally Convenient As This District For Plaintiff.

On a §1404(a) transfer motion, the Court also considers the convenience of the parties. When, as here, the transferee district is more convenient for a defendant and indifferent as to the plaintiff, this factor weighs in favor of transfer. *See Owner-Operator Indep. Drivers Ass'n v. C.R. England, Inc.*, 2002 WL 32831640, at *8, *13 (E.D. Cal. Aug. 19, 2002) (finding that transfer would prevent disruption to defendant's business and potential profitability without causing significant inconvenience to plaintiffs); *Owner-Operator Indep. Drivers Ass'n v. N. Am. Van Lines, Inc.*, 382 F. Supp. 2d 821, 825-826 (W.D. Va. 2005) (finding that convenience of parties favored transfer where defendants and their employees were in transferee

1 district and plaintiffs were scattered across the country); *see also In Re Global Cash*
 2 *Access Holdings, Inc. Secs. Litig.*, No. 08 Cv. 3516 (SWK), 2008 WL 4344531, at *5
 3 (S.D.N.Y. Sept. 18, 2008) (granting defendants' motion for transfer from New York
 4 to Nevada where action was brought on behalf of a nationwide class of purchasers of
 5 securities, many of whom were not New York residents and who would be
 6 inconvenienced regardless of whether the suit proceeded in New York or in Nevada,
 7 and where some of the defendants had strong ties to Nevada).

8 Here, this factor also weighs decidedly in favor of transfer to the Northern
 9 District of Texas, Dallas Division. AHMSI is headquartered in the Northern District
 10 of Texas and its employees (including numerous material witnesses) work in that
 11 District. (Massey Decl. at ¶¶ 3, 5.) Requiring such witnesses to travel to California
 12 for depositions and/or trial would not only disrupt and take away from AHMSI's
 13 regular business operations, but also would be very costly and inconvenient. Further,
 14 most if not all discovery will take place in the Northern District of Texas. (*Id.* at ¶ 7.)
 15 Thus, transfer of this action to the Northern District of Texas would greatly reduce the
 16 cost of prosecuting the action and would be far more convenient for AHMSI.

17 Additionally, transfer of this action to the Northern District of Texas would not
 18 work an injustice on Plaintiff. As mentioned, Plaintiff is not a resident of California
 19 and Plaintiff's home that is subject to the mortgage owned or serviced by AHMSI is
 20 not located in California. To the contrary, Plaintiff and her residential property are
 21 both located in Pennsylvania. And, despite these facts, Plaintiff had no problem filing
 22 the instant lawsuit in California. If a Pennsylvania resident takes no issue with filing
 23 an action on the completely opposite coast, it begs the question of how it would be
 24 any different for her to litigate this action in Texas. Any potential expenses incurred
 25 by Plaintiff to attend any proceedings would be essentially the same as she would be
 26 required to travel out of her home state in either situation.

27 Further, Plaintiff is attempting to represent an "unknown" number of supposed
 28 class members who are both numerous and geographically disbursed throughout the

country. Admittedly, the class members would have to travel from all corners of country to attend litigation in this District. Thus, Plaintiff cannot persuasively argue that this District is substantially more convenient than the Northern District of Texas as Plaintiff and most members of the class would have to travel regardless of forum. Furthermore, because the Northern District of Texas is near a major airport in Dallas, it is convenient for Plaintiff, putative class members and counsel to travel.

Accordingly, the convenience of the parties is another powerful factor favoring transfer because transfer would be considerably more convenient for AHMSI and would not appreciably increase inconvenience to Plaintiff.

4. The Factual Basis Of Plaintiff's Claims Is Conduct That Allegedly Occurred In The Northern District of Texas.

The location of the operative facts underlying a claim is a "key factor in determining a motion to transfer venue." *Charter Oak Fire Ins. Co.*, 294 F. Supp. 2d at 220 (citing *TM Claims Serv. v. KLM Royal Dutch Airlines*, 143 F. Supp. 2d 402, 404-405 (S.D.N.Y. 2001)). To determine the locus of operative facts, a court must look "to the site of the events from which the claim arises." *A Slice of Pie Prods., LLC v. Wayans Bros. Entm't*, 392 F. Supp. 2d 297, 306 (D. Conn. 2005). The site of the event is where the defendants took the actions that allegedly caused the plaintiff's economic damage, not where the plaintiff purportedly suffered the economic damage. *Berenson v. Nat'l Fin. Servs., LLC*, 319 F. Supp. 2d 1, 4 (D.D.C. 2004).

Here, all policy decisions regarding lender-placed insurance are made from AHMSI's headquarters in Texas. (Massey Decl. at ¶ 6.) Also, all policy manuals are maintained in Texas. (*Id.* at ¶¶ 6-7.)

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5. Plaintiff's Choice Of Forum Is Not Entitled To Great Weight Because The Litigation Is A Class Action, There Are No Significant Contacts Between The Claims And California, And Because Plaintiff Has No Connection To California.

Although in an ordinary case, courts give the plaintiff's choice of forum some deference in the §1404(a) analysis, a plaintiff's forum preference is *not* entitled to great weight in a class action. *Koster v. Lumbermen's Mt. Cas. Co.*, 330 U.S. 518, 524 (1947); *Lou v. Belzberg*, 834 F.2d 730, 739 (9th Cir. 1987). This is because "in a class action there will be numerous potential plaintiffs, each possibly able to make a showing that a particular forum is best suited for the adjudication of the class's claim." *Goggins v. Alliance Capital Mgmt., L.P.*, 279 F. Supp. 2d 228, 232 (S.D.N.Y. 2003). Indeed, one district court has said that in a class action, "plaintiff's home forum is irrelevant." *Georgouses v. NaTec Res., Inc.*, 963 F. Supp. 728, 730 (N.D. Ill. 1997).

Further, this rule is "substantially attenuated" where plaintiff has commenced the action in a forum that is not his or her residence or if the forum lacks any significant contact with the activities alleged in the complaint. In such cases, plaintiff's choice of forum is given much less weight in ruling on a discretionary transfer motion. *Lou v. Belzberg*, 834 F.2d 730, 739 (9th Cir. 1987) (In judging the weight to be accorded to a plaintiff's choice of forum, consideration must be given to the extent of both parties' contacts with the forum, including those relating to plaintiff's cause of action; if the operative facts have not occurred within the forum and the forum has no interest in the parties or subject matter, plaintiff's choice is entitled to only "minimal consideration"); *see L.A. Mem'l Coliseum Comm'n v. Nat'l Football League*, 89 F.R.D. 497, 499-500 (C.D. Cal. 1981)(plaintiff's choice of forum given great deference "when the forum chosen is not only the plaintiff's domicile but also has a significant connection with the subject matter of the case"); *In re Apple, Inc.*, 602 F.3d 909, 913 (8th Cir. 2010) (foreign plaintiff's choice of forum "entitled to substantially less deference" because there is less reason to assume convenience and

an increased risk of forum shopping); *Chrysler Capital Corp. v. Woehling*, 663 F. Supp. 478, 482 (D. De. 1987) (“[W]hen the plaintiff chooses a forum which has no connection to himself or the subject matter of the suit, and is thus not his “home turf,” the burden on the defendant is reduced and it is easier for the defendant to show that the balance of convenience favors transfer.”).

Accordingly, based on the allegations contained in the Complaint, Plaintiffs’ choice of forum is not entitled to substantial weight, if any. First, the case at bar involves a class action. (Compl. at ¶ 1.) As such, Plaintiff’s choice of forum is inherently entitled to less weight. Second, Plaintiff is not a California resident and her home which is subject to a mortgage either owned or serviced by AHMSI is not located in California; rather, both are located on the opposite coast in Pennsylvania and the unknown putative class members are disbursed throughout the country. (Compl. at ¶¶ 11-13.) Third, there are no significant contacts between Plaintiff’s claims and California. Instead, the crux of Plaintiff’s claims against AHMSI stem from decisions and activities which all purportedly originated in Texas. (See Massey Decl. at ¶ 6.) For these same reasons, neither Plaintiff’s claims nor AHMSI’s contacts with the forum merit litigating in California. Thus, in light of the foregoing, Plaintiff’s choice of forum should not be considered a significant factor in the transfer analysis.

6. Transferring The Case Will Minimize Financial Hardships On AHMSI Without Overly Burdening Plaintiff.

Litigating the case in the Northern District of Texas will limit the amount of time that senior management of AHMSI must be out of the office and away from corporate responsibilities. Not only will transfer significantly minimize the hard costs of flights, ground transportation, lodging, and meals for AHMSI executive staff who can easily travel to Dallas and back to home-base again every day, but transfer would allow those AHMSI witnesses to be working in their offices in Dallas County, while standing by on short telephone notice of when they would be needed in Court in

1 nearby Dallas.³ Transferring this case to a forum where the overwhelming majority of
 2 the most important witnesses—AHMSI’s employees, especially its top executives—
 3 can go on about their business with minimal disruption of their work responsibilities
 4 (as opposed to being out of the office on hold in California, for extended periods), is
 5 certainly a compelling factor favoring transfer.

6 Conversely, if Plaintiff ever wants to come to court, she will have to travel
 7 regardless of whether the case is pending in California or Texas. Plaintiff, a
 8 Pennsylvania resident, made the decision to file in California; litigating in Texas
 9 would be no different. In addition, neither of the counsel for the two well-known and
 10 successful plaintiffs’ class action firms representing Plaintiff are located in
 11 California⁴; rather, one is located in Texas and the other in Pennsylvania, and both
 12 have litigated other class action lawsuits across the country and, presumably, are fully
 13 equipped to litigate the case outside their home forum. *See Jones*, 463 F. Supp. 2d at
 14 277-78 (finding that this factor had little effect on entire analysis where transfer would
 15 not dramatically increase litigation costs and plaintiff’s counsel had agreed to advance
 16 expenses). (*See e.g.*, Mr. Ciolko’s Pro Hac Vice App. (Dkt. No. 7) (listing courts and
 17 cases across the country where Mr. Ciolko is eligible to practice and has served as
 18 counsel); Kessler Topaz Meltzer & Check LLP website, <http://www.ktmc.com/>
 19 (follow “New Cases” hyperlink, then follow “Imperial Sugar Company” hyperlink for
 20 class action lawsuit filed by the firm in the U.S. District Court for the Southern
 21 District of Texas or “Royal Caribbean Cruises, Ltd.” hyperlink for class action lawsuit
 22 filed by the firm in the U.S. District Court for the Southern District of Florida) (last
 23

24 ³ Also an important consideration relates to the re-calling of AHMSI witnesses, who, having
 25 testified and returned home, are then later need to testify again, for example, in rebuttal. If the case
 26 is pending in California, that would necessitate another round of expensive, last-minute, days-long
 travels. If the case is pending in the Northern District of Texas, it means a quick drive over to the
 Federal Courthouse in Dallas.

27 ⁴ The firm of Rosman & Germain LLP, which is located North of Los Angeles, is only local
 28 counsel and does not appear to have any class action experience. (*See* Mr. Ciolko’s Pro Hac Vice
 App. (Dkt. No. 7).)

1 visited Oct. 3, 2011); Nix Patterson & Roach LLP website,
 2 <http://www.nixlawfirm.com/> (“Nix Patterson & Roach has more than four decades of
 3 experience representing Plaintiffs across the United States”) or (follow “Current
 4 Cases” hyperlink, then follow “Bank of New York Mellon, N.A.” heading noting
 5 appointment of firm as lead plaintiff’s counsel in class action lawsuit filed in U.S.
 6 District Court for the Eastern District of Oklahoma) (last visited Oct. 3, 2011)).

7 7. Both Forums Can Apply The Pertinent Law.

8 This Court and the federal court in Texas are equally capable of applying
 9 federal law, as well as the relevant state laws for Plaintiff’s state law claims. *In re*
 10 *Collins & Aikman Corp. Sec. Litig.*, 438 F. Supp. 2d 392, 398 (S.D.N.Y. 2006)
 11 (explaining that federal courts “are equally capable” of applying federal law); *Pintey*
 12 *Bowes, Inc. v. Nat’l Presort, Inc.*, 33 F. Supp. 2d 130, 131-32 (D. Conn. 1998)
 13 (“federal courts are accustomed in diversity actions to applying laws foreign to the
 14 laws of their particular State.”) Accordingly, the applicable law neither favors nor
 15 disfavors transfer. It certainly imposes no impediment to transfer.

16 8. The Remaining Jones Factors Are Either Not Relevant Or Neutral
 17 In The Court’s Transfer Analysis.

18 Further, as the Court stated in *Jones*, a court should consider the availability of
 19 compulsory process to secure the attendance of witnesses. *Jones*, 211 F.3d at 498-
 20 499. *See also* FRCP 45(b)(2) and (c); *L.A. Mem’l Coliseum Comm’n v. Nat’l Football*
 21 *League*, 89 F.R.D. 497, 501 (C.D. Cal. 1981) (stating that a court’s transfer analysis
 22 should consider whether witnesses live within the court’s subpoena power). If the
 23 action were transferred to the judicial district near the location where the most
 24 important witnesses reside, such witnesses will be subject to the subpoena power of
 25 the Court. This factor gives rise to some risk of non-appearance of witnesses and at
 26 least incrementally favors Texas.

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C. When Taken As A Whole, Public Factors (Interests of Justice) Favor Transfer.

AHMSI is mindful of the substantial time and energy that a court will expend throughout the course of this litigation. The case is still, however, at the earliest possible pleading stage on the merits as Plaintiff filed the complaint on July 28, 2011 and AHMSI filed a Motion to Dismiss concurrently with the instant Motion. The fact that there has been no hearings or holdings on the merits, no discovery or depositions conducted, and that transfer would not lead to any delay, all weigh in favor of transfer.

On the scale in favor of transfer, moreover, is the undeniable fact that the people and the courts of the Northern District of Texas have a far greater interest in the case than the citizenry and courts of California. If, as Plaintiff alleges, a corporation headquartered in Texas has engaged in wrongdoing emanating from those headquarters, a jury⁵ drawn from that community has a strong interest in addressing any such problems, especially in what bodes to be a lengthy trial. And that community should bear the cost of the litigation. Similarly, Texas courts have a particular interest in adjudicating claims of its residents. The people and courts of California, on the other hand, have no comparable interest in the outcome of this litigation. Thus, there is no question that this case is more appropriately lodged in the Northern District of Texas. *See, e.g., Paper Operations Consultants Intern., Ltd. v. S.S. Hong Kong Amber*, 513 F.2d 667, 671 (9th Cir. 1975) (“Jury duty is a burden that ought not to be imposed upon the people of a community which has no relation to the litigation.”).

Thus, the interest of justice also supports transfer.

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⁵ Plaintiff has demanded trial by jury. (Compl. at pp. 1, 33.)

1 **IV. CONCLUSION**

2 Section 1404(a) clearly favors transfer to the action to the Northern District of
 3 Texas, Dallas Division, where the relevant events occurred, key documents are
 4 located, and all the most important witnesses reside. Litigating this case in the
 5 Northern District of Texas will significantly increase the convenience and reduce the
 6 financial hardship to Defendant without materially (or at all) inconveniencing or
 7 otherwise burdening Plaintiff. Further, transferring the case to the Northern District of
 8 Texas, Dallas Division, will let citizens of the forum with the greatest interest in the
 9 controversy resolve this matter. Finally, transfer will curtail Plaintiff's blatant attempt
 10 at forum-shopping. In short, transferring the case will best serve the convenience of
 11 parties and witnesses and the interest of justice, and Defendant therefore respectfully
 12 requests that the Court grant its Motion to Transfer.

13
 14 Dated: October 4, 2011

Respectfully submitted,

15 LOCKE LORD LLP

16
 17
 18 By: /s/ Conrad V. Sison

19 Conrad V. Sison

Kelly S. Biggins

20 Attorneys for Defendant

21 **AMERICAN HOME MORTGAGE**
 22 **SERVICING, INC.**